

## Frequently Asked Questions: Final Rules for Oil and Gas Development in Colorado

**NOTE:** *The following discussion is based on Final Draft Rule language distributed to the Commissioners on Nov. 7. The Commission is expected to take final action on the amendments December 9-11, 2008.*

### 1) Was this a lengthy rulemaking process?

**Yes.** This was the most extensive rulemaking hearing in the COGCC's history. During more than 21 days of hearings, the Commission heard approximately 12 hours of public comment by about 200 people and another 75 hours of testimony from about 160 party and staff witnesses. It also reviewed thousands of pages of written comment, witness testimony, and exhibits, addressed dozens of legal motions, and conducted more than 70 hours of deliberations. The resulting rules reflect substantial input from local governments, the oil and gas industry, property owners, and conservation groups.

### 2) Do the amendments allow CDOW and CDPHE to dictate conditions for or veto permits?

**No.** As directed by the General Assembly, the amended rules allow these agencies to consult with the COGCC and the permit applicant in limited circumstances. The CDOW may consult where the application involves sensitive wildlife habitat or a variance from the wildlife rules, and the CDPHE may consult where the application involves a variance from certain environmental rules or the local government requests CDPHE participation. Where consultation occurs, it must be completed within 40 days. Although the CDOW and CDPHE may recommend permit conditions, they cannot impose such conditions themselves or preclude permit issuance.

### 3) Will the amendments ensure timely and efficient permitting?

**Yes.** Under the amended rules and with additional authorized staffing, the COGCC plans to reduce its current average permitting time by more than one-third. Several amendments will help it to meet this goal. For example, operators can prepare Comprehensive Drilling Plans, which can eliminate the need for certain site-specific approvals. There are time limits on agency consultation and public comment. And operators can obtain an expedited hearing if permitting decisions are delayed.

### 4) Will the amendments protect drinking water supplies?

**Yes.** The amendments prohibit new oil and gas activities within 300 feet of designated drinking water tributaries, unless the Commission grants a variance. They also require operators to collect baseline water quality data and employ protective measures such as pitless drilling systems and fluid containment in areas further away from protected stream segments. Additionally, the amendments require operators to monitor hydraulic fracturing activities to ensure that fluids are not lost and will not harm drinking water. Finally, operators developing coalbed methane will be required to sample nearby water wells to ensure that they are not contaminated by gas or other pollutants.

### 5) Will the amendments provide additional protection for groundwater?

**Yes.** The amendments require waste pits to be lined where seepage would violate groundwater standards. Pit lining requirements will not apply to certain pits in several eastern Colorado counties until 2011, however, to allow agency officials to work with operators and local governments to determine whether liners are needed. The amendments also update the minimum liner specifications, but allow operators to use alternative systems providing equivalent protection.

### 6) Will the amendments reduce odors and air emissions?

**Yes.** The amendments respond to odor complaints in the Piceance Basin by requiring designated production equipment in that area to utilize odor control devices if it is located within ¼ mile of a home, hospital, or school. They also require operators to use "green completion" practices to conserve resources and reduce odors where practicable. These odor control devices and practices are already used by several operators in Colorado.

### 7) Do the amendments require operators to disclose chemicals used in drilling?

**Yes.** The amendments require operators to inventory chemicals and fuels kept at drilling sites for use downhole in amounts exceeding 500 pounds cumulatively each quarter. This information will be made available to agency officials and also to certain health care professionals who have signed a confidentiality agreement. This will allow government officials and

medical professionals to investigate and address public health issues and environmental impacts of oil and gas operations while protecting against public disclosure of proprietary information. The 500-pound reporting threshold was included to reduce the record-keeping burden for chemicals kept at drilling sites in small quantities while ensuring that necessary information is available to state and local officials and health care providers.

#### **8) Will the amendments protect wildlife?**

**Yes.** The amendments require operators to work with CDOW to identify appropriate measures to minimize impacts to sensitive wildlife habitat and, where feasible, to avoid the most critical areas such as those around sage grouse leks and bald eagle nests. Operators must also comply with several new operating practices for wildlife protection -- many of which are already being implemented by operators in Colorado -- such as utilizing bear-proof containers for food-related trash, disinfecting certain equipment before using it in designated Cutthroat Trout habitat, and establishing refueling and chemical storage areas outside of riparian zones and floodplains. The amendments do not include mandatory timing limitations as had been previously proposed.

#### **9) Do the amendments protect private property rights?**

**Yes.** As directed by the General Assembly, the amendments prohibit the COGCC from attaching permit-specific conditions for wildlife habitat protection without the consent of the surface owner. Where the surface owner withholds consent, the COGCC will work with the surface owner, the CDOW, and the operator to identify acceptable conditions. In the rare instance where acceptable conditions cannot be identified, the COGCC will decide whether to issue the permit without wildlife conditions or to deny the permit. To address privacy concerns, the rules do not authorize the CDOW to enter onto private land or require operators to gather wildlife information regarding such land. They also allow property owners to determine how their land will be reclaimed once drilling is completed.

#### **10) Do the amendments increase regulatory transparency and public involvement?**

**Yes.** Permit applications will be posted on the COGCC website and provided to the local government, the surface owner, certain nearby landowners, and the CDOW and CDPHE. Applications will also be subject to a 20-day public comment period, which may be extended by 10 additional days under limited circumstances. These notice and comment procedures are similar to those used by other state and local agencies.

#### **11) Will the amendments go into effect right away?**

**No.** Unless otherwise specified, the amendments will become effective on May 1, 2009 on federal land and on April 1, 2009 on all other land, to allow an appropriate transition period. Some rules do not go into effect until Summer 2009 or later, such as requirements to obtain increased bonds for existing facilities or to paint tanks visible from public highways.

#### **12) Do the amendments follow a one-size-fits-all approach?**

**No.** Many rules will apply differently in different areas of the state. For example, because fast-growing oil and gas development in northwestern Colorado is causing more issues there than elsewhere, all new pads and facilities there will require COGCC approval before drilling permits are issued. Also, some areas of eastern Colorado are exempt from certain provisions, including requirements to utilize odor-control equipment, maintain a post-construction stormwater program, or notify nearby landowners of permit applications.

#### **13) Do the amendments allow for "risk-based" cleanups of contaminated sites?**

**No.** The COGCC historically has never used such an approach, in part because it lacks the resources to conduct complex risk assessment evaluations. Moreover, while a "risk-based" cleanup may be less expensive to an operator because it allows higher contamination levels to be left behind, such an approach is effective only if future uses of the site can be controlled. Because the COGCC lacks the authority to impose and enforce environmental covenants restricting future uses, contaminated property could be used for residential, agricultural, or commercial purposes in the future, thereby exposing future owners or users to contaminants left onsite.

#### **14) Will the amendments reduce oil and gas development?**

**No.** The amendments do not prohibit drilling in any area or during any period. Although drilling is restricted in limited parts of western Colorado to protect drinking water and critical wildlife habitat, these restrictions are subject to modification under appropriate circumstances. In addition, the amendments provide more predictable timelines for permit processing and offer incentives for longer-term planning. The oil and gas industry has responded positively to these incentives, with more than a dozen operators already initiating discussions on Comprehensive Drilling Plans. The COGCC does, however, anticipate that drilling activity in Colorado will moderate in 2009 for reasons largely independent of the amendments. Decreased drilling activity is anticipated throughout much of the West due to falling natural gas prices and deterioration of the national economy. This problem is exacerbated in Colorado by limitations on pipeline capacity, which further reduce prices.